

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESUS ARREOLA-CASTILLO,

Petitioner,

vs.

Civ. No. 14-258 MCA/KK

R. IVES, Federal Warden,
and Attorney General of the
State of New Mexico,

Respondents.

**ORDER OVERRULING PETITIONER'S OBJECTIONS TO THE MAGISTRATE
JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION AND
DISMISSING PETITION WITHOUT PREJUDICE**

THIS MATTER comes before the Court on review of the Magistrate Judge's Proposed Findings and Recommended Disposition ("PFRD"), (*doc. 24*), and Petitioner's objections to it, (*doc. 25*). Petitioner objects to the Magistrate Judge's PFRD which recommended that his Petition be dismissed without prejudice for lack of subject matter jurisdiction. Having considered Petitioner's objections and the applicable law, the Court finds that his objections are not well-taken.

When a party files timely written objections to the magistrate judge's recommendation, the district court will conduct a *de novo* review and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(C). *De novo* review requires the district judge to consider relevant evidence of record and not merely to review the magistrate judge's recommendation. *In re Griego*, 64 F.3d 580, 583-84 (10th Cir. 1995). "[A] party's objections to the magistrate judge's [PFRD] must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. One Parcel of Real Prop., With Buildings, Appurtenances, Improvements, & Contents*, 73 F.3d 1057, 1060 (10th Cir. 1996). Following a *de novo* review of the evidence in

the record, the Court finds that Petitioner's objections are without merit.

The Magistrate Judge correctly concluded that Petitioner does not satisfy the "in custody" requirement of 28 U.S.C. § 2254 and that this Court lacks subject matter jurisdiction. **IT IS**

HEREBY ORDERED that:

- (1) Petitioner's objections are **OVERRULED**;
- (2) The Magistrate Judge's Proposed Findings and Recommended Disposition is **ADOPTED**;
- (3) The Motion to Vacate, Set Aside or Correct Sentence is **DISMISSED** without prejudice.



THE HONORABLE M. CHRISTINA ARMIJO
CHIEF UNITED STATES DISTRICT JUDGE